

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.138.406 dental auxiliaries)	PROPOSED AMENDMENT AND
functions, 24.138.505 dentist)	REPEAL
licensure by credentials, 24.138.507)	
dentist licensure by credentials for)	
specialists, 24.138.509 dental)	
hygiene limited access permit,)	
24.138.512 denturist intern,)	
24.138.514 converting inactive)	
license to active, 24.138.525)	
reactivation of an expired license,)	
24.138.540 military training or)	
experience, 24.138.2101,)	
24.138.2102, 24.138.2104,)	
24.138.2105, and 24.138.2106)	
continuing education, 24.138.2402)	
screening panel, 24.139.3229)	
continuing education in anesthesia,)	
and the repeal of ARM 24.138.401)	
introduction)	

TO: All Concerned Persons

1. On September 3, 2015, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry (board) no later than 5:00 p.m., on August 28, 2015, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) through (8)(a) remain the same.

~~(b) has been certified in dental radiology in another state; or~~

(c) and (d) remain the same, but are renumbered (b) and (c).

(d) For dental auxiliaries beginning work in Montana after January 1, 2016, radiology certification from other states will no longer be accepted, with the exception of a board-approved written examination. Dental auxiliaries who acquired radiology certification in other states and were employed as dental auxiliaries in Montana prior to January 1, 2016, will be grandfathered.

(9) and (10) remain the same.

AUTH: 37-4-205, 37-4-408, MCA

IMP: 37-4-408, MCA

REASON: Following lengthy consideration and discussion, the board is amending this rule to address the board's concerns about the dental radiology qualifications of dental auxiliaries that are practicing in Montana with dental radiology credentials or certification granted by other states. In the interest of patient safety, the board determined there is no reasonable expectation for supervising dentists to know the current or past radiology certification requirements of other states, or whether those requirements meet the board's standards and qualifications. The board also agreed it is reasonably necessary to grandfather those dental auxiliaries who received their out-of-state certification prior to January 1, 2016, to give reasonable notice of the change to supervising dentists, dental auxiliaries, and the public.

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) through (1)(f) remain the same.

(g) ~~submits evidence~~ certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a license in this state. Courses submitted must meet board approvals as defined in ARM 24.138.2102 and pursuant to ARM 24.138.2105(2);

(1)(h) through (2) remain the same

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

REASON: The board is amending this rule and ARM 24.138.507, 24.138.509, 24.138.514, 24.138.525, and 24.138.3229 to clarify that proof of continuing education submitted to the board must meet the requirements of ARM 24.138.2105(2) as proposed in this notice. The board found some submissions required by these rules were unclear or unable to be verified. Standardizing the submission requirements will clarify what is expected from the applicant or licensee and simplify the licensure process for board staff.

24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

(1) through (1)(e) remain the same.

(f) ~~submits evidence~~ certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a Montana license. Courses

submitted must meet continuing education requirements as defined in board rule and pursuant to ARM 24.138.2105(2);

(1)(g) through (2) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) through (1)(d) remain the same.

(e) provides ~~evidence~~ certificates of attendance of completion of 12 additional continuing education credits for the three-year cycle immediately preceding LAP application pursuant to ARM 24.138.2105(2); and

(1)(f) through (5) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-405, MCA

IMP: 37-4-405, ~~37-4-406~~, MCA

REASON: Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.512 DENTURIST INTERN (1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in 37-29-303(1), MCA.

(2) through (6) remain the same.

AUTH: 37-1-131, 37-29-201, ~~37-29-303~~, MCA

IMP: 37-1-131, 37-29-303, MCA

REASON: To address questions from license application staff and avoid any perceived conflict with 37-29-303, MCA, the board is amending this rule to reference the specific section of statute that contains the pre-internship requirements for denturist applicants.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.514 APPLICATION TO CONVERT AN CONVERTING FROM INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (3)(c) remain the same.

(d) ~~evidence~~ certificates of attendance of continuing education pursuant to ARM 24.138.2105(2) as follows:

(i) through (4)(b) remain the same.

(c) ~~evidence~~ certificates of attendance of continuing education pursuant to ARM 24.138.2105(2) as follows:

(i) 60 hours of continuing education for a dentist for the three most current renewal years;

- (ii) 36 hours of continuing education for a dental hygienist for the three most current renewal years; or
 - (iii) 36 hours of continuing education for a denturist for the three most current renewal years.
- (4)(d) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-319, MCA

REASON: The board is amending (4)(c) to clarify the renewal cycle is based on three renewal years not calendar years to be consistent with provisions of (3)(c) within this rule.

The board is further simplifying the title/catchphrase for clarity.

24.138.525 REACTIVATION OF AN EXPIRED LICENSE (1) through (1)(b) remains the same.

(c) proof of CE pursuant to ARM 24.138.2105(2) as follows:

- (i) a dentist shall submit certificates of attendance of 60 hours of CE obtained in the most recent three years;
- (ii) a dental hygienist shall submit certificates of attendance of 36 hours of CE obtained in the most recent three years; and
- (iii) a denturist shall submit certificates of attendance of 36 hours of CE obtained in the most recent three years.

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-141, MCA

24.138.540 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a dentist, dental hygienist, or denturist. ~~At a minimum, satisfactory~~ Satisfactory evidence shall include includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(3)(b) through (4) remain the same.

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: It has come to the board's attention that certain military personnel (Reservists and National Guardsmen who have never been activated) in fact do not receive a DD 214 form upon their discharge from the military. Because the rule may be interpreted to absolutely require a DD 214 from all applicants who wish to submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending this rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.138.2101 DEFINITION OF CONTINUING EDUCATION (1) and (2) remain the same.

(3) Residency programs accredited by the Commission on Dental Accreditation or its successor may be submitted for continuing education credit.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, ~~37-4-205, 37-29-306~~, MCA

REASON: The board is amending this rule to further define acceptable continuing education in response to applicant and staff questions. Following questions from licensing staff, particularly regarding credentialing applicants, the board concluded that residency programs fulfill the intent and criteria for acceptable continuing education.

The board has determined it is reasonably necessary to amend the implementation citations to accurately reflect all statutes implemented through the rule.

24.138.2102 SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION (1) through (a)(xv) remain the same.

(xvi) management of medical emergencies; ~~and~~

(xvii) practice management; and

(xviii) dental anesthesiology.

(b) through (d) remain the same.

AUTH: 37-1-319, 37-4-205, MCA

IMP: 37-1-306, 37-1-319, ~~37-4-205~~, MCA

REASON: The board determined amending this rule to add dental anesthesiology to the continuing education (CE) subject matters acceptable to fulfill board requirements. Noting that dentists holding anesthesia permits must complete CE hours in anesthesiology, the board concluded it is reasonable to make this addition and allow dentists to obtain CE in dental anesthesia prior to completing the total hours necessary to receive their anesthesia permits.

The board is amending the implementation citations to accurately reflect the statutes implemented through the rule.

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) ~~Licensees~~ Starting April 15, 2015, licensees shall ~~have completed~~ complete, within a three-year renewal cycle, the following minimum number of continuing education credits of instruction in acceptable courses of ~~continued~~ continuing education:

(1)(a) through (6) remain the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, ~~37-4-205, 37-29-306~~, MCA

REASON: The board determined it is reasonably necessary to establish a start date for the continuing education cycle so licensees have a reasonable expectation of when the random audit will take place, which will be after April 15, 2018.

The board is amending the implementation citations to accurately reflect the statutes implemented through the rule.

24.138.2105 REPORTING PROCEDURES (1) remains the same.

(2) Licensees are required to keep a certificate of attendance of continuing education completed and make this available to the board if so requested. The certificate of attendance shall include at a minimum:

- (a) licensee name;
- (b) course title;
- (c) course date;
- (d) presenter or sponsor; and
- (e) number of credit hours earned.

(3) and (4) remain the same.

(5) A The department will conduct a random audit of the licensees will be conducted in every three-year cycle. The audit shall include ten percent of active dentists, ten percent of active dental hygienists, and ten percent of active denturists.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

IMP: 37-1-131, 37-1-306, ~~37-4-205~~, MCA

REASON: The board determined is amending this rule to address questions from staff, licensees, and applicants as to acceptable information in a continuing education document and the percentage of licensees in each profession to be selected for random audit in each three-year audit cycle.

It is reasonably necessary to amend the authority and implementation citations to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.2106 EXEMPTIONS AND EXCEPTIONS (1) and (2) remain the same.

(3) Inactive licensees shall be exempt from the continuing education requirements so long as the license remains on inactive status. Inactive licensees seeking to convert to an active status must comply with ARM 24.138.514. ~~An inactive license, when activated, will begin a new three-year cycle.~~

(4) remains the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, ~~37-4-205~~, ~~37-29-306~~, MCA

REASON: The board is amending (3) to align with the new three-year audit cycle and April 15, 2015, start date, and the elimination of the rolling three-year audit cycles.

The board is amending the implementation citations to accurately reflect the statutes implemented through the rule.

24.138.2402 SCREENING PANEL (1) The screening panel shall consist of three dentists, one dental hygienist, one public member, and one dentist. The ~~presiding officer of the screening panel~~ board president may reappoint or replace screening panel members as necessary at the ~~presiding officer's~~ board president's discretion.

(2) remains the same.

AUTH: 37-4-205, 37-29-201, MCA

IMP: 37-1-307, 37-4-201, 37-29-105, MCA

REASON: Following a review of the board's rules and upon department recommendation, the board determined it is reasonably necessary to amend this rule so that final decisions regarding screening panel reappointment and replacement is under the authority of the board president. Board chairs generally appoint board panel members, and this amendment will align this board's procedures with the other professional and occupational licensing boards that are administratively attached to the department.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.3229 REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) All dentists holding permits to provide deep sedation/general anesthesia must submit ~~evidence~~ certificates of attendance of having attended a minimum of 20 hours of continuing education every ~~three-year~~ years cycle pursuant to ARM 24.138.2105(2).

(2) All dentists holding permits to provide moderate sedation must submit ~~evidence~~ certificates of attendance of having attended a minimum of 12 hours of continuing education every ~~three-year~~ years cycle pursuant to ARM 24.138.2105(2).

(3) through (6) remain the same

(7) A random audit of licensees ~~may~~ will be conducted in every three-year cycle.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-4-101~~, ~~37-4-511~~, MCA

REASON: See REASON for ARM 24.138.505. Further, the board is amending (7) to clarify that the department does and will continue to conduct random CE audits on all active licensees, including those with anesthesia permits, every three years.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

4. The rule proposed to be repealed is as follows:

24.138.401 INTRODUCTION found at ARM page 24-12017.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-4-101, 37-4-401, 37-29-102, MCA

REASON: Following a review of the rules, the board determined it is reasonably necessary to repeal this rule as unnecessary and unenforceable.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., September 11, 2015.

6. An electronic copy of this notice of public hearing is available at www.dentistry.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.406, 24.138.505, 24.138.507, 24.138.509, 24.138.512, 24.138.514, 24.138.525, 24.138.540, 24.138.2101, 24.138.2102, 24.138.2104, 24.138.2105, 24.138.2106, 24.138.2402, and 24.139.3229, will/not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.138.401 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination(s) is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail dlibsdden@mt.gov.

10. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
DR. AIMEE AMELINE, D.D.S., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 3, 2015